

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6131

PETITION OF MARCELO MONTES DE OCA
(Hearing held May 10, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, June 29, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The proposed construction of a new single-family dwelling requires a variance of 1.50 feet as it is within 25.30 feet of the established front building line. The required established building line is 26.80 feet.

Jennifer Gerard and Deborah Tyler, neighbors of the petitioner, appeared in support of the variance request.

The subject property is Lot 6, Block E, Park Knolls Subdivision, located at 8409 Garland Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax No. 01408241).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The existing single-family dwelling is currently located in the established front building line setback.
2. The petitioner testified that he purchased the house with plans to renovate and to add a second-story addition. The petitioner testified that when the renovation started, it was discovered that the first floor had a lot of termite damage. The petitioner testified that the construction removed the first floor of the house down to its foundation and that the house is being rebuilt on the existing foundation. The petitioner testified that he received a building permit to continue the construction on the house which included the removal of the first floor walls. The petitioner testified that during a routine inspection, an inspector with the Department of Permitting Services (DPS), determined that the construction was not a renovation, but would be considered new construction and must meet an established building line requirement.

3. The petitioner testified that most of the lots on the street have a gradual slope to their topography, but that the subject property is considerably steeper, and that retaining walls were constructed about foot and a half at the rear of his house when it was built. The petitioner testified that the drop in topography at the rear of the house ranges from 3 to 10 feet. The subject property is 5,553 square feet and narrows from front to back, while the other lots along the street are more rectangular in shape. There are 10 lots on the petitioner's street, four of the lots are similar in size or larger than the petitioner's lot, the other six lots range in size of 6,000 to 7,700 square feet. See Exhibits 4 [site plan] and 7(a) through 7(c) [photographs].
4. The neighbors testified that the new construction on the subject property is a significant improvement to the lot and that the location of the house has not changed from its original location. The neighbors testified that to the left of the subject property is a sewer drain that goes into a creek behind the property and that there is a flood plain at the rear of the lot.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the subject property is a small, irregularly shaped lot that is approximately 10% below the minimum lot size for the zone. The Board finds that the subject property narrows from front to rear and that the lot is further constrained by its varied, sloping topography, its size and shape, all characteristics that distinguish this lot from its neighbors.

The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance request for the construction of a new single-family dwelling on the existing foundation of the previously-existing house is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will not materially change the view for the surrounding properties and that the variance request will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.


Accordingly, the requested variance of 1.50 feet from required 26.80 foot established front building line for the construction of a new single-family dwelling is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(e).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 29th day of June, 2006.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.